

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Application of Pacific Gas and Electric Company (U 39-E) for Adoption of its 2006 Energy Resource Recovery Account (ERRA) Forecast Revenue Requirement and for Approval of Its 2006 Ongoing Competition Transition Charge Revenue Requirement and Rates.

Application 05-06-007  
(Filed June 1, 2005)

**ASSIGNED COMMISSIONER'S RULING AND SCOPING MEMO**

**1. Summary**

A prehearing conference (PHC) was held in this proceeding on August 10, 2005. Pursuant to Rules 6(a)(3) and 6.3 of the Commission's Rules of Practice and Procedure (Rules), this ruling and scoping memo (collectively, "Ruling") determines the scope, need for evidentiary hearings, schedule, principal hearing officer, and the category of this proceeding. This Ruling also establishes certain procedures for the conduct of this proceeding.

**2. Scope**

The scope of this proceeding is as follows:

- Determine and adopt a forecasted revenue requirement for Pacific Gas and Electric Company's (PG&E) Energy Resource Recovery Account (ERRA) for 2006.
- Determine and adopt a forecasted revenue requirement for PG&E's ongoing Competition Transition Charge (CTC) for 2006.
- Set rates that will enable PG&E to recover its 2006 forecasted revenue requirement for the ERRA and ongoing CTC.

A key variable for determining the ongoing CTC revenue requirement is the benchmark price for electric power. The benchmark price used by this proceeding will be based on the 20-year levelized cost of a combined cycle gas-fired turbine (CCGT) computed by the California Energy Commission (CEC) or by CPUC staff running the CEC's CCGT model. The CCGT model will use (1) the non-gas inputs used to calculate the 20-year baseload market price referent adopted by Resolution E-3942, issued on July 21, 2005, and (2) a 20-year forecast of natural gas prices provided by the CEC or CPUC's Energy Division.<sup>1</sup> It is anticipated that the CEC or CPUC staff will provide an updated benchmark price by September 9, 2005. PG&E shall incorporate this update into its forecast of ongoing CTC and file and serve by September 13, 2005, a supplement to Application (A.) 05-06-007 containing the updated ongoing CTC.

With one exception, this proceeding will not re-litigate issues decided in previous ERRR/CTC proceedings that are currently subject to applications for rehearing.<sup>2</sup> The one exception is PG&E's proposal in A.05-06-007 to require departing load customers to pay a higher CTC rate than bundled service and

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<sup>1</sup> This proceeding will use the 20-year gas forecast in the CEC's gas report if it is available on a timely basis. The CEC's preliminary gas report is available at the following internet address: <http://www.energy.ca.gov/2005publications/CEC-600-2005-026/CEC-600-2005-026.PDF>. Supporting documents are available at the following internet address: [http://www.energy.ca.gov/2005\\_energypolicy/documents/index.html#071405](http://www.energy.ca.gov/2005_energypolicy/documents/index.html#071405). If the CEC's gas report is not available on a timely basis, this proceeding will use the CPUC's avoided cost gas forecasting methodology that incorporates recent market data.

<sup>2</sup> It is anticipated that the rates established by this proceeding will be set subject to adjustment and true-up, if necessary, to reflect the resolution of pending applications for rehearing.

direct access customers. Parties may address whether PG&E's proposal violates Decision (D.) 05-01-035. All other aspects of PG&E's proposal that are subject to applications for rehearing are outside the scope of this proceeding.

Also excluded from the scope of this proceeding are issues associated with (1) the manipulation of energy markets and other abuses that occurred during the energy crisis of 2000 - 2001, and (2) refunds that PG&E has or will receive from power producers for price gouging connected with the energy crisis of 2000 - 2001. All such refunds must be flowed through to PG&E's ratepayers. The mechanism for doing so is identified in D.04-11-015, and this mechanism does not include the ERRA and ongoing CTC that are the subject of this proceeding.<sup>3</sup>

### **3. Incorporation of the Record from Other Proceedings**

The Merced and Modesto Irrigation Districts request that the entire record of previous ERRA/CTC proceedings be incorporated by reference into the instant proceeding. The purpose of doing so is to facilitate the continued litigation of those issues decided in previous ERRA/CTC proceedings that are currently subject to applications for rehearing.

The request is declined for two reasons. First, to avoid burdening the record of the instant proceeding, only those portions of the record from other

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<sup>3</sup> D.04-11-015 authorized PG&E to issue Energy Recovery Bonds (ERBs) to refinance costs incurred by PG&E during the energy crisis, including exorbitant prices paid to electric power suppliers. D.04-11-015 requires that any refunds received by PG&E from the power suppliers for price gouging be used to reduce the cost of the ERBs passed through to ratepayers. (See PHC transcript, pp. 3 - 4, for a brief description of the mechanism used to pass through the refunds to ratepayers.) Additionally, PG&E must pay interest to ratepayers on the refunds until the proceeds are passed through to ratepayers.

proceedings that are material and relevant to the instant proceeding will be admitted into the record of the instant proceeding. Second, this Ruling determines, *supra*, that the scope of this proceeding excludes the re-litigation of issues that are currently subject to applications for rehearing. Accordingly, there is no need to incorporate by reference the entire record of other proceedings.

Parties may, of course, cite specific portions of the record of other proceedings that are material and relevant to the instant proceeding. Any party that cites the record of another proceeding must provide a copy of the document (or portion of the document) being cited, except that is not necessary to provide copies of Commission decisions.

#### **4. Need for Evidentiary Hearings**

This Ruling affirms the preliminary determination in Resolution 176-3154, issued on June 16, 2005, that there is a need for evidentiary hearings in this proceeding. The scope of the hearings will be kept as narrow as practical. The hearings will start at 10:00 a.m., on Tuesday, October 4, 2005, and continue as necessary through Friday, October 7, 2005.

The Merced and Modesto Irrigation Districts have identified two issues requiring an evidentiary hearing. These issues are (1) whether alternate methods should be used to determine the benchmark price of electric power used to forecast the ongoing CTC, and (2) PG&E's forecast of municipal departing load (MDL). Regarding the first issue, this Ruling determines, *supra*, that an update of the CEC's CCGT will be used to determine the benchmark price for electricity. Accordingly, there is no need for hearings on alternate methods.

Regarding the second issue, Merced and Modesto did not identify any factual disputes regarding PG&E's forecast of MDL. Rather, they state that evidentiary hearings might be necessary if PG&E does not respond adequately to

Merced and Modesto's discovery requests. In light of the pending discovery, Merced and Modesto will have an opportunity to raise factual issues regarding PG&E's forecast of MDL, if necessary, at the scheduled evidentiary hearings.

Several other parties have indicated that there is a need for evidentiary hearings but did not identify specific factual issues. Parties will have an opportunity to address factual issues at the scheduled evidentiary hearings, but parties will also have to provide advance notice of the specific factual issues they intend to pursue at the evidentiary hearings.

On September 27, 2005, PG&E shall coordinate an all-party conference for the purpose of reaching an agreement on the following: (1) a joint stipulation of facts and contested issues, (2) the order of witness, and (3) the order of cross examination. PG&E shall produce documents showing (1) the joint stipulation of facts and contested issues, and (2) the agreed-upon order of witnesses and order of cross examination. PG&E shall serve these documents on the parties and the assigned Administrative Law Judge (ALJ) by September 28, 2005.

Finally, parties must comply with the Hearing Room Ground Rules set forth in Appendix A of this Ruling.

#### **5. Procedure for Requesting a Final Oral Argument**

Parties may request a final oral argument before the Commission pursuant to Rule 8(d). Parties must include the request in the opening line of their concurrent opening brief and should identify in the heading of the brief that the brief includes this request. If a party does not file an opening brief, it must file and serve a stand-alone request for a final oral argument.

**6. Schedule**

The schedule for this proceeding is as follows:

<b>Date</b>	<b>Event</b>
August 26, 2005	<ul style="list-style-type: none"> <li>PG&amp;E files &amp; serves the supplement required by the assigned ALJ via e-mailed directive on 6/30/2005.</li> </ul>
September 9, 2005	<ul style="list-style-type: none"> <li>CEC or CPUC staff e-mails to the service list the updated benchmark price for elec. power used to compute the CTC.</li> </ul>
September 13, 2005	<ul style="list-style-type: none"> <li>PG&amp;E files &amp; serves a supplement to A.05-06-007 that contains an updated calculation of ongoing CTC and supporting workpapers (including material e-mailed by the CEC or CPUC staff on September 9, 2005).</li> <li>Workshop for CEC and/or CPUC staff to explain their computation of the benchmark price for elec. power and to answer questions about the computation. (Time &amp; place to be determined.)</li> </ul>
September 19, 2005 <b>12 noon</b>	<ul style="list-style-type: none"> <li>ORA and intervenors serve opening testimony. E-mail service due no later than 12 noon. PG&amp;E may serve supplemental testimony at the same time.</li> </ul>
September 26, 2005 <b>12 noon</b>	<ul style="list-style-type: none"> <li>Reply testimony served. E-mail service due no later than 12 noon.</li> </ul>
September 27, 2005	<ul style="list-style-type: none"> <li>All-party conference to agree on: (1) a joint stipulation of facts and contested issues, (2) the order of witnesses, and (3) the order of cross examination.</li> </ul>
September 28, 2005 <b>2:00 p.m.</b>	<ul style="list-style-type: none"> <li>Parties provide notice via e-mail to the service list of the specific factual issues they intend to pursue at the evidentiary hearings. Such notice shall be sent no later than 2:00 p.m. on September 28, 2005.</li> </ul>
September 28, 2005 <b>Close of Business</b>	<ul style="list-style-type: none"> <li>PG&amp;E e-mails the following to the service list: (1) joint stipulation of facts and contested issues, (2) the agreed-upon order of witnesses and order of cross examination.</li> </ul>
October 4, 2005	<ul style="list-style-type: none"> <li>Evidentiary hearings start.</li> </ul>
October 5 – 7, 2005	<ul style="list-style-type: none"> <li>Evidentiary hearings continue, as needed.</li> </ul>

Date	Event
October 14, 2005	<ul style="list-style-type: none"> <li>▪ PG&amp;E files &amp; serves a supplement to A.05-06-007 that contains: (1) the final calculation of the forecasted 2006 ERRRA and ongoing CTC revenue requirement, and (2) the final rate design and proposed rates.</li> <li>▪ Opening briefs. There is no need for parties to participate in the evidentiary hearings in order to submit briefs.</li> <li>▪ Deadline to file &amp; serve requests for a final oral argument.</li> </ul>
October 21, 2005	<ul style="list-style-type: none"> <li>▪ Reply briefs.</li> <li>▪ Case submitted.</li> </ul>
November 15, 2005	<ul style="list-style-type: none"> <li>▪ Draft Decision.</li> </ul>
December 15, 2005	<ul style="list-style-type: none"> <li>▪ Final Decision.</li> </ul>

The goal is to resolve this proceeding by December 15, 2005. As required by Pub. Util. Code § 1701.5(a), the issues identified in this Ruling shall be resolved no later than 18 months from the date of this Ruling.

## **7. Organization and Service of Documents**

Parties shall limit their testimony, cross examination, and briefs to matters within the scope of this proceeding. To the extent possible, parties should organize their testimony, cross examination, and briefs in the same manner as PG&E's testimony attached to A.05-06-007.

All parties shall e-mail an electronic copy of their documents submitted in this proceeding to the assigned ALJ at tim@cpuc.ca.gov. The electronic copy must be Microsoft Word and/or Excel to the extent possible.

All documents must be served in accordance with Rules 2.3 and 2.3.1. These Rules require, among other things, that documents be served electronically, in a searchable format, unless a party did not provide an e-mail address. If no e-mail address has been provided, service should be made by

United States mail. Parties shall provide concurrent service to all parties on the service list, including those listed under “State Service” and “Information Only.”

**8. Category**

This Ruling affirms the Commission’s preliminary determination in Resolution ALJ 176-3154, dated June 16, 2005, that this is a ratesetting proceeding as set forth in Rule 5(c). This Ruling’s determination of category may be appealed in accordance with Rule 6.4.

**9. Principal Hearing Officer**

This Ruling designates ALJ Kenney as the principal hearing officer for this proceeding pursuant to Rule 5(l).

**10. Ex Parte Communications**

This Ruling determines that an evidentiary hearing is needed. Consequently, parties must comply with the rules governing *ex parte* communications set forth in Rules 7(c) and 7.1.

**IT IS RULED that:**

1. The scope and schedule for this proceeding is set forth in the body of this Ruling. The assigned Administrative Law Judge (ALJ) may revise the schedule, as necessary.

2. There is a need for evidentiary hearings in this proceeding. Evidentiary hearings will begin at 10:00 a.m., October 4, 2005, and continue, as needed, through October 7, 2005, in the Commission Courtroom, State Office Building, 505 Van Ness Avenue, San Francisco, California.

3. The request by the Merced and Modesto Irrigation Districts to incorporate by reference the entire record of other proceedings into the instant proceeding is denied. Parties may cite specific portions of the record of other proceedings that are material and relevant to the instant proceeding. Any party that does so shall



provide a copy of the document (or portion of the document) being cited, except there is no need to provide copies of Commission decisions.

4. All documents must be served in accordance with Rules 2.3 and 2.3.1 Commission's Rules of Practice and Procedure (Rules). These Rules require, among other things, that documents be served electronically, in a searchable format, unless a party did not provide an e-mail address. If no e-mail address has been provided, service shall be made by United States mail.

5. Parties shall provide concurrent service to all parties on the service list, including those listed under "State Service" and "Information Only."

6. All parties shall e-mail an electronic copy of their documents submitted in this proceeding to the assigned ALJ at [tim@cpuc.ca.gov](mailto:tim@cpuc.ca.gov). The electronic copy must be Microsoft Word and/or Excel to the extent possible.

7. PG&E shall coordinate a conference among the parties on September 27, 2005, to (i) produce a joint stipulation of facts and contested issues, and (ii) decide the order of witnesses and the order of cross examination.

8. On September 28, 2005, PG&E shall provide the following documents to the service list via e-mail: (i) a joint stipulation of facts and contested issues, and (ii) a list showing the order of witnesses and the order of cross examination

9. Parties shall provide notice of the specific factual issues they intend to pursue at the evidentiary hearings. Parties shall provide such notice via e-mail to the service list by no later than 2:00 p.m. on September 28, 2005.

10. Parties shall comply with the Hearing Room Ground Rules set forth in Appendix A of this Ruling.

11. Requests for a final oral argument before the Commission must be filed and served no later than October 14, 2005.

12. Parties shall limit their written testimony, cross examination, and briefs to matters within the scope of this proceeding. To the extent possible, parties should organize their testimony, cross examination, and briefs in the same manner as Pacific Gas and Electric Company's testimony attached to Application 05-06-007.

13. The category for this proceeding is ratesetting. This determination of category may be appealed in accordance with Rule 6.4.

14. ALJ Kenney is the principal hearing officer for this proceeding.

15. Parties shall comply with the ex parte communication rules set forth in Rules 7(c) and 7.1.

Dated August 25, 2005, at San Francisco, California.

/s/ MICHAEL R. PEEVEY

Michael R. Peevey  
Assigned Commissioner

## APPENDIX A

### Hearing Room Ground Rules

#### Page 1 of 2

1. All prepared written testimony should be served on (i) everyone on the service list, including Appearances, State Service, and Information Only, and (ii) the Assigned Commissioner's office and the assigned ALJ. Prepared written testimony shall **not** be filed with the Commission's Docket Office.
2. Each party sponsoring an exhibit should, in the hearing room, provide two copies to the ALJ and one to the court reporter, and have copies available for distribution to parties present in the hearing room. If the exhibit is testimony that has already been served on the ALJ, the ALJ only needs to be provided with one copy for central files. The upper right hand corner of the exhibit cover sheet should be blank for the ALJ's exhibit stamp. If there is not sufficient room in the upper right hand corner for an exhibit stamp, please prepare a cover sheet for the exhibit.
3. As a general rule, if a party intends to introduce an exhibit while cross examining a witness, the party should provide a copy of the exhibit to the witness and the witness' counsel before the witness takes the stand on the day the exhibit is to be introduced. Generally, a party is not required to give the witness an advance copy of the document if it is to be used for purposes of impeachment or to obtain the witness' spontaneous reaction.
4. To the extent possible, exhibits should be distributed before the proceeding "goes on the record" so that parties are prepared to go forward with cross-examination when the ALJ goes "on the record." Breaks can also be used for the distribution of documents.
5. Generally, corrections to an exhibit should be made in advance and not orally from the witness stand, and **only corrections of a substantive nature will be allowed from the witness stand**. Corrections should be made in a timely manner by providing new exhibit pages on which the corrections appear. The original text to be deleted should be lined out, and the substitute or added text should be inserted and underlined. Each

correction page should be marked with the word “revised” and the revision date.

**Page 2 of 2**

6. Individual chapters of large, bound volumes of testimony may be marked with separate exhibit numbers, as convenient.
7. Partial documents or excerpts from documents must include a title page or first page from the source document. Excerpts from a lengthy document should also include the table of contents contained in the source document if one is available.
8. Motions to strike prepared testimony must be made at least four working days before the witness appears in order to provide the ALJ time for review of the arguments and relevant testimony.
9. It is not necessary to serve documents that are marked and admitted into the record as reference items. The party sponsoring a reference item shall provide the document(s) to other parties upon request.
10. Beverages are allowed if containers and napkins are disposed of properly.

**(END OF APPENDIX A)**

**CERTIFICATE OF SERVICE**

I certify that I have by mail, and by electronic mail to the parties for whom an electronic mail address has been provided, this day served a true copy of the attached Assigned Commissioner's Ruling and Scoping Memo on all parties of record in this proceeding or their attorneys of record.

Dated August 25, 2005, at San Francisco, California.

/s/ FANNIE SID  
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Fannie Sid

**N O T I C E**

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

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The Commission's policy is to schedule hearings (meetings, workshops, etc.) in locations that are accessible to people with disabilities. To verify that a particular location is accessible, call: Calendar Clerk (415) 703-1203.

If specialized accommodations for the disabled are needed, e.g., sign language interpreters, those making the arrangements must call the Public Advisor at (415) 703-2074, TTY 1-866-836-7825 or (415) 703-5282 at least three working days in advance of the event.